



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 31, 1984

Mr. Percy Deal
Chairman, Navajo County
Board of Supervisors
Governmental Center
Holbrook, Arizona 86025

Dear Mr. Deal:

This refers to the districting for the five supervisor districts in Navajo County, Arizona, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on July 2, 1984. Although we noted your request for expedited consideration, we have been unable to respond until this time.

We have considered carefully the information you have sent and data obtained from the 1980 Census, as well as information provided by other interested parties. At the outset, we note that the proposed plan, like the existing plan, provides for one district in which Indians have a population sufficient to afford a realistic opportunity for electing a representative of their choice. However, unlike the existing plan which elects a three-member board from three districts, the proposed plan elects a five-member board from five districts. Thus, without adequate explanation the plan reduces a realistic opportunity of the Indian minority to elect one of three members to the board to a situation where they would be able to elect only one of five members to the board.

In addition, our analysis shows that, to achieve this result, a significant portion of the Indian population seems unnecessarily to have been fragmented between proposed Districts 2 and 3. We have not been presented with nor have we otherwise been able to ascertain any overriding governmental interest for splitting the Indian population in this manner. On the

other hand, we do understand that the two affected tribes (Hopi and Navajo) share common interests in a number of areas and had themselves submitted for consideration plans that would have placed them in the same district, resulting in a second district with an Indian population sufficient to elect a candidate of their choice.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). Such an effect is present where a change would "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). In light of these principles, and the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county has met its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the districting plan here under submission.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make this districting legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Navajo County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division